RAJAMOHAN MANIAM A

v.

GPA PLASTIC INDUSTRIES SDN BHD

COURT OF APPEAL, PUTRAJAYA B
RAUS SHARIF PCA
HISHAMUDIN MOHD YUNUS JCA
CLEMENT SKINNER JCA
[CIVIL APPEAL NO: W-02-447-2011]
13 OCTOBER 2011 C

LABOUR LAW: *Employment - Constructive dismissal - Demotion - Appellant transferred from post of plant executive to store executive - Whether transfer amounted to constructive dismissal as well as a fundamental breach of appellant's contract of service with respondent - Whether a bona fide transfer - Whether appellant voluntarily left respondent since he secured a job with another company - Quah Swee Khoon v. Sime Darby Bhd* D

ADMINISTRATIVE LAW: *Judicial review - High Court - Certiorari - Findings of Industrial Court - Whether decision unreasonable - Whether Industrial Court committed errors of law warranting intervention* E

The appellant initially filed a suit against the respondent in the Industrial Court claiming for wrongful dismissal by the respondent company. It was the appellant's case that he worked with the F respondent company as a plant executive in the production department since 1996 and thereafter, he was transferred to the position as a store executive in 2005. The appellant refused to accept the said transfer as he felt that it was a demotion which would have ultimately driven him into resignation. He also G contended that it was a move engineered by the respondent's assistant general manager, who had a dislike for the appellant due to past work related incidents. The basis of the appellant's claim was that he had been in the production department for more than nine years and he was never familiar with the work at the store. H Further, he claimed that the work at the store would carry lesser functions and responsibilities with only three store hands as compared to when he was in the production department with around 30 personnel working under him. The Industrial Court allowed the appellant's claim and ruled that the appellant's transfer I from the post of plant executive to the post of store executive amounted to constructive dismissal as well as a fundamental

breach of the appellant's contract of service with the respondent company. As such, the appellant was awarded backwages in the sum of RM81,240 and compensation *in lieu* of reinstatement. Dissatisfied with this decision, the respondent applied to the High Court for judicial review seeking the issuance of a writ of *certiorari* to quash the Industrial Court's award. The High Court granted the respondent's application wherein it was held that the Industrial Court had committed errors of law which warranted intervention. Hence this appeal by the appellant. The respondent company submitted that the appellant never considered himself as being constructively dismissed as he left the respondent voluntarily since he had secured a job with another company *vide* the latter's letter of offer dated 4 April 2005 ('the letter').

Held (setting aside order of High Court; restoring order of Industrial Court with variation to the award for backwages) Per Hishamudin Mohd Yunus JCA delivering the judgment of the court:

(1) The transfer was a disguised demotion of the appellant and a fundamental breach of the appellant's contract of employment with the respondent company. It was obvious from the evidence that there was an ulterior motive for the transfer, meaning that it was not a *bona fide* transfer. The post at the store was an inferior post as compared to the post of a plant executive. Further, there was a strained relationship between the appellant and the respondent's assistant general manager, who had quite openly showed his strong feeling of dislike for the appellant and was the personnel behind the transfer. (paras 23 & 25)

(2) The appellant joined another company upon the expiration of the seven days' notice that he gave to the respondent company. As such, having considered himself constructively dismissed, the appellant had to look for another job as he had a family to support and financial commitments to meet. What the appellant did was what any reasonable man would have done under the circumstances. It would be a grave injustice to deny the appellant of his right to consider himself as having been wronged and constructively dismissed merely on the basis of the letter. (para 31)

(3) The courts had always held that such disguised demotion amounts to constructive dismissal and that it also amounts to a fundamental breach of contract on the employer's part

entitling the employee to resign (*Quah Swee Khoon v. Sime Darby Bhd*; refd). Given the facts and the evidence, there was nothing unreasonable about the Industrial Court's decision. Hence, the decision ought not to have been disturbed by the High Court as there was no basis for judicial review. (paras 8, 26 & 28)

[A sum of RM12,600 to be deducted from the Industrial Court's award for backwages as there was evidence to the effect that upon ceasing employment with the respondent company, the appellant was employed for three months at another company].

Bahasa Malaysia *Translation Of Headnotes*

Perayu telah pada mulanya memfailkan tindakan terhadap responden di Mahkamah Perusahaan di mana tuntutannya adalah pemecatan salah oleh syarikat responden. Adalah kes perayu bahawa beliau telah bekerja sebagai eksekutif kilang di bahagian pengeluaran sejak 1996 dan selepas itu, perayu telah dipindah ke pangkat eksekutif setor pada tahun 2005. Perayu enggan menerima pemindahan tersebut kerana beliau berasa ianya merupakan suatu penurunan pangkat untuk mendorongnya meletak jawatan. Perayu juga berhujah bahawa ianya merupakan suatu muslihat yang diatur oleh penolong pengurus besar responden, yang tidak menyukai responden disebabkan oleh insiden lampau berkaitan dengan kerja. Asas tuntutan perayu adalah bahawa beliau telah berkhidmat di bahagian pengeluaran untuk lebih daripada sembilan tahun dan tidak biasa dengan kerja di setor. Lagipun, perayu menuntut bahawa kerja di setor mempunyai kekurangan tugas dan tanggungjawab dengan hanya tiga kakitangan setor berbanding dengan bahagian pengeluaran yang mempunyai 30 kakitangan yang telah bekerja di bawahnya. Mahkamah Perusahaan telah membenarkan tuntutan perayu dengan memutuskan bahawa pemindahan perayu daripada jawatan eksekutif kilang ke jawatan eksekutif setor merupakan pembuangan kerja secara konstruktif dan juga sebagai kemungkiran dasar kontrak perkhidmatan dengan syarikat responden. Oleh itu, perayu diawardkan gaji tertunggak sebanyak RM81,240 dan pampasan sebagai ganti rugi pengambilan semula. Tidak puas hati dengan keputusan tersebut, responden telah memohon ke Mahkamah Tinggi untuk semakan kehakiman dalam mengeluarkan writ *certiorari* bagi membatalkan award Mahkamah Perusahaan. Mahkamah Tinggi membenarkan permohonan responden di mana ianya telah diputuskan bahawa Mahkamah Perusahaan telah khilaf dari segi undang-undang yang

mewajarkan campurtangan. Oleh itu rayuan ini oleh perayu. Syarikat responden berhujah bahawa perayu tidak menganggap dirinya sebagai telah dibuang kerja secara konstruktif memandangkan perayu telah meninggalkan responden secara sukarela kerana telah berjaya mendapat kerja di syarikat lain melalui surat tawaran syarikat tersebut bertarikh 4 April 2005 ('surat').

Keputusan (mengenepikan perintah Mahkamah Tinggi; mengekalkan perintah Mahkamah Perusahaan dengan variasi kepada award untuk gaji tertunggak)

Oleh Hishamudin Mohd Yunus HMR menyampaikan penghakiman mahkamah:

(1) Pemindahan itu merupakan satu penyamaran penurunan pangkat perayu dan kemungkiran asas kontrak pekerjaan perayu dengan syarikat responden. Adalah jelas daripada keterangan bahawa terdapat motif tersembunyi untuk pemindahan, yang bermakna bahawa ianya bukanlah pemindahan *bona fide*. Pangkat di setor adalah pangkat rendah berbanding dengan pangkat eksekutif kilang. Tambahan pula, terdapat perhubungan tegang di antara perayu dan penolong pengurus besar responden, yang telah secara terbuka menunjuk rasa tidak puas hati dengan perayu dan merupakan orang yang bertanggungjawab di sebalik pemindahan itu.

(2) Perayu telah mula bekerja di syarikat lain selepas tamatnya notis tujuh hari yang telah diberi olehnya kepada syarikat responden. Oleh itu, setelah mendapati dirinya dibuang kerja secara konstruktif, perayu terpaksa mencari kerja lain memandangkan beliau mempunyai keluarga untuk menyokong dan komitmen kewangan untuk dipenuhi. Apa yang dilakukan oleh perayu adalah sesuatu yang akan dilakukan oleh sesiapa yang munasabah di dalam keadaan sebegitu. Ianya tidak adil untuk perayu dinafikan hak untuk menganggap dirinya sebagai telah disalahkan dan dibuang kerja secara konstruktif atas dasar surat itu.

(3) Mahkamah telah selalunya memutuskan bahawa penyamaran penurunan pangkat sebegitu merupakan pembuangan kerja konstruktif dan ia juga merupakan kemungkiran asas kontrak bagi pihak majikan yang menyebabkan pekerja meletak jawatan (*Quah Swee Khoon v. Sime Darby Bhd*; dirujuk). Dengan adanya fakta dan keterangan, tiada apa-apa yang tidak munasabah

berkenaan keputusan Mahkamah Perusahaan. Oleh itu, keputusan itu tidak sepatutnya diganggu oleh Mahkamah Tinggi kerana tiada dasar bagi semakan kehakiman.

[Jumlah sebanyak RM12,600 perlu ditolak daripada award Mahkamah Perusahaan bagi gaji tertunggak memandangkan terdapat keterangan bahawa setelah berhenti kerja dengan syarikat responden, perayu telah bekerja selama tiga bulan di syarikat lain].

Case(s) referred to:

Non-metallic Mineral Products Manufacturing Employees Union & Ors v. South East Asia Fire Bricks Sdn Bhd [1976] 2 MLJ 67 ***(refd)***

Quah Swee Khoon v. Sime Darby Bhd [2001] 1 CLJ 9 CA ***(refd)***

Wong Chee Hong v. Cathay Organisation (M) Sdn Bhd [1988] 1 CLJ 45; [1988] 1 CLJ (Rep) 298 SC ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 53

For the appellant - CV Devan; M/s CV Devan & Co
For the respondent - Balan Nair; M/s Seah Balan Ravi & Co

[Editor's note: For the High Court judgment, please see GPA Plastic Industries Sdn Bhd v. Mahkamah Perusahaan Malaysia & Anor [2011] 1 LNS 51.]

Reported by Kumitha Abdul Majid

JUDGMENT

Hishamudin Mohd Yunus JCA:

[1] This is an appeal against the decision of the High Court of Kuala Lumpur of 25 January 2011.

[2] On 25 January 2011 the High Court of Kuala Lumpur (appellate and special powers division) had allowed the respondent's application for judicial review against the decision of the Industrial Court of 10 December 2009.

[3] Earlier, the Industrial Court, in its award, had allowed the appellant's claim for wrongful dismissal. The Industrial Court ruled that the transfer of the appellant from the post of Plant Executive to the post of store executive amounts to constructive dismissal as well as a fundamental breach of the appellant's contract of

service with the respondent company. The Industrial Court, accordingly, awarded the appellant back wages (in the sum of RM81,240) and compensation *in lieu* of reinstatement (in the sum of RM44,005).

[4] Aggrieved by the decision of the Industrial Court, the respondent company applied to the High Court of Kuala Lumpur for judicial review pursuant to O. 53 of the Rules of the High Court 1980, seeking the issuance of a writ of certiorari to quash the award of the Industrial Court. The application was made on the ground, *inter alia*, that, on the facts and evidence, no reasonable tribunal would have arrived at the decision that was made by the Industrial Court.

[5] The High Court allowed the respondent company's application for judicial review. The High Court accepted the contention of the learned counsel for the respondent company that the decision of the Industrial Court, on the facts and evidence, was unreasonable.

[6] Dissatisfied by the decision of the High Court, the appellant appealed to this Court.

[7] On 13 October 2011 we unanimously allowed the appeal with costs. We now give our grounds.

[8] We are of the view that, given the facts and the evidence, there is nothing unreasonable about the decision of the Industrial Court. Therefore, there was no basis for judicial review by the High Court.

[9] We shall deal with the facts and the evidence first.

[10] The appellant started work with the respondent company as a plant executive in the production department on 2 September 1996. The respondent company was then known as 'Koaki Plastic Industries Sdn Bhd'. On 1 November 2001 the respondent company changed its name to 'GPA Plastic Industries Sdn Bhd' (the current name of the respondent company).

[11] Towards the end of 2004 there was a vacancy in the post of Store Supervisor at the store of the respondent company. The store supervisor was the personnel in charge of the respondent company's store. The management decided to fill the vacancy by

transferring the appellant to the store as a Store Executive (instead of as a store supervisor). The appellant was informed of the transfer on 26 March 2005. At the meeting of Heads of Department on 28 March 2005, in the presence of the appellant, an announcement was made by one Mr Er Cheng Guan, the Assistant General Manager, to the effect that the appellant would be transferred to the store as a Store Executive with effect from 1 April 2005. Later, on the same day, the appellant was issued with the letter of transfer, but he refused to accept it.

[12] The appellant was unhappy about the transfer. Although his salary would remain the same, he felt that it was a demotion. He believes that there was an ulterior motive for the transfer: it was a subtle means to remove him from the Production Department and to demote him; and, ultimately to drive him into resignation. He believes it was a move engineered by Mr Er who, by reason of past work-related incidents involving him and the appellant, had a dislike for the latter. The appellant felt frustrated and humiliated. He had been in the Production Department for more than nine years. He was never familiar with the work at the store. At the Production Department he had around 30 personnel working under him. They include a supervisor, a production clerk, line leaders, operators, foremen, as well as maintenance staff; whereas at the Store he would have only three store hands under him. These store hands are essentially coolies (manual workers) of foreign nationality. The work at the store would carry lesser functions and responsibilities. Prior to his appointment as a Store Executive, the store was never placed under the charge of an officer of 'executive' rank. Previously, the person in charge of the store was only of the rank of supervisor.

[13] According to the appellant:

> If I were to go to the store, I will lose all the respect among my fellow colleagues and employees and it will be very humiliating for me to work in the store when I had so much power and authority in the production department. I know the Company purposely did this to frustrate and victimize me.

[14] But the respondent company disputes this allegation. According to the evidence of the respondent company:

> The Claimant was selected because he had considerable experience in the Company and his current duties included liaison with the Store.

[15] On 7 April 2005 the appellant wrote to the respondent company asking the latter to withdraw the transfer order and to reinstate him to his original post; otherwise he would regard himself as having been dismissed. According to the concluding part of his letter:

> Kindly reinstated my position within 7 days upon receiving this letter. Otherwise I will terminate myself unwillingly.

[16] The respondent company replied to this letter on 9 April 2005 explaining as to why he had to accept the transfer.

[17] The appellant did not report for work with effect from 14 April 2005. The respondent company wrote to him *via* a letter dated 18 April 2005 asking him to explain his absence from work, failing which disciplinary action would be taken against him.

[18] The appellant's last drawn salary with the respondent company was RM3,385 per month.

[19] According to the judgment of the Industrial Court:

> The onus of proving constructive dismissal lies with the Claimant where he has to establish his case on a balance of probabilities.
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> …
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> The evidence before the Court that the Claimant was transferred from being Plant Executive in the Production Department to the position of Store Executive effective from 1 April 2005 *vide* letter dated 28 March 2005 (CO19) was not disputed.
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> The Company *vide* its witness testified that the Claimant was selected because he had considerable experience in the Company and his current duties included liaison with the store.
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> The Court rejects the Company's argument that the Claimant was not demoted by the said transfer as his salary remained unchanged.
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> The Court in fact accepts the Claimant's argument that the said transfer was indeed a demotion of himself as it meant that his overall responsibilities changed. The transfer also meant that the Claimant's job scope changed.
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> There is a dearth of evidence from the Company to show that the Claimant's transfer was a lateral one.

The Company submitted that the Claimant did not protest or notify the Company that he was dissatisfied with the transfer and was therefore treating himself as being constructively dismissed.

The Claimant testified that on 28 March 2005 during the announcement of his transfer he did not voice out any objection as at the material time there was no formal letter of transfer and further he elected to remain silent because of fear of insubordination.

The Claimant considered duties in the store was for less responsible job and it was an inferior post as compared to those in the production.

The Claimant did issue a letter by hand dated 7 April 2005 requesting the Company to reinstate him within seven days to his original position or he will consider himself constructively dismissed.

In the light of the facts and evidence the Court is satisfied that the Claimant's transfer from Production Department to the store by the Company was fundamentally a breach of the Claimant's contract of employment and actuated with bad faith. It is my finding based on evidence and facts that the Company was aware of the Claimant's rejection of a new position that was offered to him by the Company.

It is without doubt that the Company had constructively dismissed the Claimant by demoting him from Production Department to the position of Store Executive which was an inferior post, and that the Company had no just cause or excuse to dismiss.

[20] As said earlier, the learned High Court judge granted the application for the issuance of a writ of *certiorari* to quash the decision of the Industrial Court. According to the learned High Court judge:

[15] The Industrial Court found that the 2nd Respondent has been constructively dismissed because his overall responsibilities and job scope has changed. I find that the Industrial Court has failed to consider whether on the unchallenged evidence that the Applicant was unable to fill the vacancy of store executive for five months, the reason for the transfer is legitimate and whether in the circumstances the conduct of the Applicant in transferring the 2nd Respondent to the post of store executive was conduct which evinced an intention not to be bound by the 2nd Respondent's contract of employment. I find that the Industrial Court has failed to take into account the testimony

A of the 2nd Respondent which shows the real reason why the 2nd Respondent refused the transfer. The Industrial Court has failed to draw the proper inferences from the unchallenged evidence and/or admitted facts. The Industrial Court has also failed to consider paragraph 34 of the 2nd Respondent's affidavit in reply wherein he avers that he did not work long in the other company thus tacitly admitting that he did secure new employment after claiming constructive dismissal.

[16] For the aforementioned reasons I find that no reasonable tribunal charged with the same facts and evidence would have come to a similar conclusion as the Industrial Court did in this case. I find that the Industrial Court has committed errors of law which warrants intervention.

[21] With respect we are unable to agree with the views of the learned High Court judge.

[22] We feel that it is appropriate that at the outset we reiterate here as to what had been said by the Federal Court in *Non-metallic Mineral Products Manufacturing Employees Union & Ors v. South East Asia Fire Bricks Sdn Bhd* [1976] 2 MLJ 67 as to the proper role of a High Court in hearing a case of judicial review:

> The circumstances under which the High Court can interfere with the decision of the Industrial Court are limited. For instance, it has no jurisdiction under section 25 of the Courts of Judicature Act to interfere with the findings of fact reached by the Industrial Court on the ground that the decision is erroneous except where there is a clear error of law on the face of the record. It cannot arrogate the powers of a Court of Appeal by substituting its own judgment for that of the Industrial Court on questions of fact and cannot review the evidence.

[23] On our part, we agree with the Industrial Court: that is, on the facts and the evidence the transfer was a disguised demotion of the appellant and a fundamental breach of the appellant's contract of employment with the respondent company. We are of the view that it is obvious from the evidence that there was an ulterior motive for the transfer, meaning that it was not a *bona fide* transfer. At the Production Department the appellant had 30 staff working under him including a supervisor, a production clerk, line leaders, foremen and maintenance staff. But at the store he had only three coolies of foreign nationality working under him. At the Production Department he had much power and authority,

a wider scope of work; whereas at the store he would have less functions and responsibilities. Thus, the post at the Store was an inferior post as compared to the post of a Plant Executive. Going to the store would, therefore, be frustrating and humiliation for him. And there was the strained relationship between the appellant and Mr Er, the Assistant General Manager, who had quite openly shown his strong feeling of dislike for the appellant; and who had twice suggested to the appellant that the latter should go and work at the store; and that on the second occasion the said Mr Er even said:

> Mr. Mohan, you must go to Store otherwise you have no place in production.

[24] There is also the further evidence of the appellant to this effect:

> He further told me that if I myself resign, he will talk to management and give me compensation of around 14 Months salary, which is better than labour laws which will give only 9 to 10 months salary.

[25] It is obvious that Mr Er, as we had said, had a strong dislike for the appellant and was the personnel behind the transfer.

[26] Our courts have always held that such disguised demotion amounts to constructive dismissal; and that it also amounts to a fundamental breach of contract on the part of the employer entitling the employee to resign. In *Quah Swee Khoon v. Sime Darby Bhd* [2001] 1 CLJ 9 Gopal Sri Ram JCA (as he then was) clearly explains the principle (at p. 19):

> An employer does not like a workman. He does not want to dismiss him and face the consequences. He wants to ease the workman out of his organization. He wants to make the process as painless as possible for himself. He usually employs the subtlest of means. He may, under the guise of exercising the management power of transfer, demote the workman. That is what happened in *Wong Chee Hong (ibid)*. Alternatively, he may take steps to reduce the workman in rank by giving him fewer or less prestigious responsibilities than previously held. Generally speaking, he will make life so unbearable for the workman so as to drive the latter out of employment. In the normal case, the workman being unable to tolerate the acts of oppression and victimization will tender his resignation and leave the employer's services. The question will then arise whether such departure is a voluntary resignation or a dismissal in truth and fact.

[27] It is to be noted that the above passage had referred to the case of *Wong Chee Hong*. In *Wong Chee Hong v. Cathay Organisation (M) Sdn Bhd* [1988] 1 CLJ 45; [1988] 1 CLJ (Rep) 298 Salleh Abas LP, in delivering the unanimous judgment of the Supreme Court, elaborated on the legal principles (at pp 300-304):

> The issue in this appeal is as stated earlier: whether the concept of constructive dismissal has application to the interpretation of section 20 of our Industrial Relations Act. Therefore we must know and be clear precisely in our mind what constructive dismissal is.
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> In England where this expression originated, there had been a great deal of unsettled opinions amongst chairmen of industrial tribunals and also among judges who sat to hear appeals from those tribunals. According to the Court of Appeal in *Western Excavating (ECC) Ltd v. Sharp* [1978] I.R.L.R. 27, it means no more than the common law right of an employee to repudiate his contract of service where the conduct of his employer is such that the latter is guilty of a breach going to the root of the contract or where he has evinced an intention no longer to be bound by the contract. In such situations, the employee is entitled to regard himself as being dismissed and walk out of his employment.
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> ...
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> Thus in our judgment the transfer, which relegated the applicant to a position of lesser responsibilities, *albeit* on the same terms and conditions of service, which transfer the appellant refused to accept, is a dismissal. It clearly shows that not only the respondent company was displeased with the appellant but it also exhibited the respondent company's intention not to be bound by the contract any longer. Such relegation of responsibility with its consequent humiliation and frustration and loss of estimation amongst his fellow employees made it impossible for the appellant to carry on being employed under the respondent company's organization. In other words, he had been driven out of his employment. This is therefore dismissal. (See *Cox v. Philips Industries Ltd* [1975] 1 WLR 638 and *JF Bumpus v. Standard Life Assurance Co Ltd* [1974] IRLR 232).
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> ...
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> Looking at the award, it is clear to everyone that the Industrial Court in coming to the conclusion that the appellant was dismissed did not misdirect itself in law. The court only spoke of

constructive dismissal in the context of the contract test. It never even made any reference to the unreasonableness test. This is made clear by the following passage at page 9 of the award:

> Past cases of constructive dismissals dealt with by this court ... are agreed that whether or not there has been constructive dismissal is to be determined by the contract test: that is, did the employer's conduct amount to a breach of contract which entitled the employee to resign? And did the employee make up his mind and act at the appropriate point in time soon after the conduct of which he complained had taken place.

...

We accept this passage to be the correct statement of the law.

[28] On the evidence, the facts and the law, we are of the view that the learned High Court judge, with respect, had erred when he held that the decision of the Industrial Court was unreasonable. On our part, we hold that, far from being unreasonable, the decision of the Industrial Court was consistent with the evidence, the facts and the law. The Industrial Court had correctly evaluated the evidence and the facts and had applied the contract test. Its decision ought not to have been disturbed by the High Court on the judicial review application by the respondent company.

[29] It is, however, the submission of the learned counsel for the respondent company that the appellant had never considered himself as being constructively dismissed. It is argued that he left the respondent company voluntarily; and that the real reason for having left the respondent company was because the appellant had secured another higher paying job with a company called Pearl Precision (M) Sdn Bhd in Klang. Learned counsel for the respondent company refers to the letter of offer of a job dated 4 April 2005 addressed to the appellant from a company called Pearl Precision (M) Sdn Bhd.

[30] In considering this submission, let us examine what the appellant said in his evidence:

> Q32: Upon your letter seeking reinstatement/constructive dismissal were you appointed in another company immediately?

A32: I had issued the letter to the company seeking reinstatement within 7 days or I constructively dismiss myself. As no reply came by 14.4.2005 I deemed myself dismissed as at 14.4.2005. Around that time I gave the notice I found out that there is a vacancy for post of Production Manager in Pearl Precision (M) Sdn. Bhd. based in Pandamaran Jaya, Klang. I was informed by a person in Pearl Precision that if I am dismissed or constructively resign from GPA Plastic, then I can join them immediately.

As I received no reply from the Company to my notice during the 7 days notice period, I joined Pearl Precision around the 15th or 16th April 2005 as Production Manager with salary of RM4,200.

Q33: How long did you work in Pearl Precision?

A33: Pearl Precision only paid my wages for the 1st month of service and after that they delayed and staggered payment of salary because the Company was on the verge of bankruptcy. After 3 months working there, I left the company as they were unable to pay my salary and were closing down. So, from August 2005 until 2006 I was unemployed. I only managed to get a job in September 2006 as a Production Executive in Biopro (M) Sdn. Bhd. in Port Klang with a starting salary of RM1,800 per month and currently I am still attached here.

Q34: Did you leave GPA Plastic because of this particular new job waiting for you?

A33: No, that was never ever the reason. I never intended to leave GPA Plastic except for their conduct in wanting to force me to another lower department which I don't have work experience or work knowledge and humiliating to accept. When I knew that I was constructively dismissed, I had to take up a job in Pearl Precision although I knew the Company was on the verge of closing up because I had to sustain myself monetarily as I have a family to support and many commitments financially.

[31] Having considered the above evidence of the appellant, with respect we are unable to agree with the respondent's submission, even though it is not disputed that the appellant did receive the letter of offer of 4 April. Such a submission is contrary to the evidence of the appellant as given above, which we think is

credible; and, in any event, had been accepted by the Industrial Court. According to the appellant, he only started looking for a new job around the time that he considered himself as having been constructively dismissed. In fact he joined Pearl Precision only on 15 or 16 April 2005, that is to say, upon the expiration of the 7-days' notice that he gave to the respondent company. He did not leave the company voluntarily. He explained that having considered himself constructively dismissed he had to look for another job as he had a family to support and had financial commitments to meet. What the appellant did was what any reasonable man would have done under the circumstances. In our judgment it would be a grave injustice to deny the appellant of his right to consider himself as having been wronged and constructively dismissed merely on the basis of that letter of 4 April.

[32] In conclusion, we set aside the order of the High Court. We restore the order of the Industrial Court but with a slight variation: that is, a sum of RM12,600 is to be deducted from the award of back wages as there is evidence to the effect that upon ceasing employment with the respondent company the appellant was employed for three months at Pearl Precision (M) Sdn Bhd at a salary of RM4,200 per month.

[33] We award costs of RM5,000 to the appellant.